

902 KAR 18:081. Local agency and vendor hearing process and administrative appeal process.

RELATES TO: 194A.050, 194A.505, 194A.990, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 7 C.F.R. Part 246, 42 U.S.C. 1786

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246, provide for grants for state operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. This administrative regulation establishes the local agency's and vendor's rights to a hearing in regards to the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Local Agency. (1) A local agency may request a hearing for the following adverse actions:

- (a) Denial of a local agency's application;
- (b) Disqualification of a local agency; and
- (c) Any other adverse action that affects a local agency's participation.

(2) The following state WIC agency actions shall not be subject to administrative review:

- (a) Expiration of the local agency's agreement; and
- (b) Denial of a local agency's application if the state WIC agency has issued a request for bid and followed finance procurement procedures.

(3) The following shall be the effective dates of adverse actions against local agencies:

- (a) Denial of local agency applications shall be effective immediately;
- (b) Adverse actions in subsection (1)(b) and (c) of this section shall be effective no later than sixty (60) days after the date of the notice of adverse action is served by hand delivery or certified mail receipt; and
- (c) Adverse actions that are appealed shall be effective the date that the local agency receives the hearing decision.

Section 2. Vendor Right to a Hearing or Administrative Review. (1) In accordance with 7 C.F.R. 246.18, a vendor aggrieved by a qualifying adverse action may request a hearing for the following:

- (a) Denial of authorization based on the vendor authorization criteria found in 902 KAR 18:050;
- (b) Termination of an agreement;
- (c) Disqualification in accordance with 902 KAR 18:061; and
- (d) Imposition of a fine or civil money penalty in lieu of a disqualification in accordance with 902 KAR 18:071.

(2) In accordance with 7 C.F.R. 246.18, the following state WIC agency actions shall not be subject to administrative review under this section:

- (a) The validity or appropriateness of the vendor selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current SNAP disqualification or civil money penalty for hardship;
- (b) The validity or appropriateness of the selection criteria for competitive price, including vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors;
- (c) The validity or appropriateness of the participant access criteria and the state WIC agency's participant access determinations;

- (d) The determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list of entities where infant formula can be purchased;
- (e) The validity or appropriateness of the prohibition of incentive items;
- (f) The determination not to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;
- (g) The determination that a vendor did not have a policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation;
- (h) The expiration or non-renewal of a vendor's agreement;
- (i) Disputes regarding food instrument payments and vendor claims; or
- (j) Disqualification of a vendor as a result of disqualification from the SNAP.

Section 3. Hearing or Administrative Appeal. (1) A vendor or local agency may file a written request by hand delivery or certified mail with the state WIC agency within fifteen (15) days after receipt of notice of the adverse action.

(2) The hearing shall be conducted in accordance with KRS Chapter 13B.

(3) Within fifteen (15) days of a request for a hearing, the cabinet shall issue a date of hearing.

(4) The state WIC agency may dismiss a request for hearing if:

(a) The request is not received within the time limit set by this administrative regulation;

(b) The request is withdrawn in writing by the appellant or a representative of the appellant;

or

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing.

(5) To protect the identity of the state WIC agency investigators, cross examinations of these witnesses shall be conducted behind a protective screen or other device in accordance with 7 C.F.R. 246.18.

(6)(a) In accordance with 7 C.F.R. 246.18, the hearing officer shall issue a written recommended order no later than ninety (90) days after the cabinet receives the request for the hearing which shall include:

1. The findings of fact;

2. Conclusions of law; and

3. Recommended disposition, including recommended penalties, if any, in accordance with KRS 13B.110.

(b) In accordance with 7 C.F.R. 246.18, decisions of the hearing official shall be based on KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18, and the facts of the case as established in the official record of the hearing as defined in KRS 13B.130.

(c) A hearing officer shall not reduce or modify sanctions that are prescribed by KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(7) Exceptions to the hearing officer's recommended order shall be filed with or mailed to Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.

(8) Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order, as provided in KRS 13B.110.

(9) A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(10) Exceptions and responses to exceptions shall be considered filed on the date they are

received by the cabinet.

(11) Appealing an action shall not relieve an appellant from the responsibility of continued compliance with KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18.

(12) The final order shall be issued in accordance with KRS 13B.120.

(13) In accordance with 7 C.F.R. 246.18, the state WIC agency shall make denials of authorization and disqualifications imposed under 902 KAR 18:061 effective on the date of receipt of the notice of adverse action.

Section 4. In accordance with KRS 13B.140, any party aggrieved by the final order may seek judicial review of the decision by filing a petition within thirty (30) days of receipt of final order notice in the Franklin Circuit Court or the circuit court of the county in which the party resides or operates a business. (40 Ky.R. 507; 834; eff. 10-16-13.)